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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,396	02/28/2002	David B. Wallace	D4865-00004	8099
41396	7590	06/02/2006	EXAMINER	
DUANE MORRIS LLP IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			HARTMAN JR, RONALD D	
			ART UNIT	PAPER NUMBER
			2121	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/085,396

Applicant(s)

WALLACE, DAVID B.

Examiner

Ronald D. Hartman Jr.

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See office action for details.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

In the After Final Response, filed on 5/19/2006, the applicant correlated "directing a transport carrier" to "coordinating material shipments from the vendor to the manufacturing site". The examiner had held that "automatically directing a transport vehicle to deliver materials" was not properly supported by U.S. Patent No. 6,366,829 and therefore this feature would not be afforded priority to U.S. Patent No. 6,366,829 for that very reason. This was because the examiner felt that "directing" was meant to convey something other than a "coordination" of the materials to the manufacturing site. That is, in light of Mowery et al., U.S. Patent No. 5,983,198, the "directing" step claimed was considered to be akin to *guiding the vehicle over a particular route*, as shown as a directional arrow in Figure 1, between elements 114 and 116. The examiner had felt that directing a vehicle over a route to be substantially different that coordinating resources since the coordination resources does not encompass a particular route, but rather, merely conveys that resources will make it from one place to another. This is a substantial difference that has been clarified by way of the applicants remarks/arguments filed on 5/19/2006.

Therefore, the examiner will interpret "... directing a transport vehicle ..." in light of the applicant's remarks; specifically page 12, wherein the applicant states, "the transportation carrier then coordinates the material shipment ...". Therefore, it is now clear that the applicants intent of "directing a vehicle" was to provide for a feature wherein the materials may be delivered by the vehicle, from the vendor site, to the manufacturing site, rather than to specifically guide the vehicle over a route, per se, from the vendor site to the manufacturing site.

That is, since priority may now be granted to U.S. Patent No. 6,366,829, having an effective filing date of 10/6/1998, Mowery et al. is no longer viewed to be a 102(b) type of reference and therefore may be overcome by appropriate showing under 37 CFR 1.131.

However, the information contained within the 1.131 filing is still questioned and appears to be insufficient for overcoming Mowery et al. The applicant, on page 7 states that the "Engineering Report of 4/13/1998 supports Applicants statement that he was in possession of the claimed invention prior to the effective date of the Mowery reference." The examiner is extremely confused by this statement since the effective filing date of Mowery et al. is 4/23/1996, and therefore the applicant is simply asked, "How does 4/13/1998 come before 4/23/1996". It does not and therefore the applicant's statement is false.

Furthermore, the applicant appears to assume that the title "existing system" provides the applicant with the necessary proof that the applicant was in possession of the invention prior to 4/13/1998. There is simply not sufficient evidence to proof that the applicant was in fact in possession of the invention claimed by way of pending claims 17 and 19-20 before 4/13/1998. Next, the applicant asserts that since "existing system" appears in the evidence of the Engineering Report dated 4/23/1998, the applicant now should be afforded a date which is effectively two years prior to the Engineering Report of 4/13/1998, that being 4/23/1996, the same date as the effective filing date of Mowery et al. The examiner simply does not agree with this assertion.

The applicant shows piece-meal evidence and asserts that this evidence is adequate to show conception and possession prior to 4/23/1996. For instance, applicant refers to 2/9/1996 as showing "accessing inventory data from your central computer", 2/12/1996 as showing "black boxes at each silo group". The applicant also refers to 3/28/1996 as showing "the implementation of the black boxes", and 4/8/1996 and 6/3/1996 as evidence showing Michael Karpa discussing the invention with the applicant. On page 10 of the applicant's remarks, the applicant states that "he presented various types of leveling systems as well as options to retrieve data from a site and transmit that data back to a central computer where the data could be displayed for the logistical purpose of consistent product replenishment in accordance with the conception of applicants invention." It appears that the applicant has taken the liberty of expanding "for the purpose of consistent product replenishment in accordance with the conception of applicants invention" to mean that "automatically ordering and

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automatically directing a transport vehicle to deliver the materials". Simply put, there is not adequate support for this interpretation. It appears that the applicant was only in possession of a level monitoring system on or about 5/1996 to 6/1996. In any event, these dates are not sufficient to overcome the rejections since the effective filing date of Mowery et al. is, once again, 4/23/1996.

Therefore, the rejections of claims 17 and 19-20 are maintained as claim 18 was canceled, and the amendment filed on 5/19/2006 will be entered, in order, as the applicant has stated on page 6 of the remarks, to place the case in better form of appeal.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald D. Hartman Jr. whose telephone number is (571) 272-3684. The examiner can normally be reached on Mon.-Fri., 11:00 - 8:30 pm, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on (571) 272-3687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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